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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,993	08/27/2003	David J. Schneider	P755-2	4365

7590 12/06/2006

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EXAMINER	
ANDERSON, JAMES D	

ART UNIT	PAPER NUMBER
1614	

DATE MAILED: 12/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/648,993	SCHNEIDER, DAVID J.	
	Examiner	Art Unit	
	James D. Anderson	1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 August 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-33* is/are rejected.

7)☒ Claim(s) *9,10 and 25* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of the Claims

Claims 1-33 are currently pending and are the subject of this Office Action. This is the first Office Action on the merits of the application.

Priority

This application is a Continuation-in-Part of U.S. Non-Provisional Application No. 09/909,707, filed July 20, 2001, now U.S. Patent No. 6,616,892, issued Sept. 9, 2003. Applicants are requested to amend the first paragraph of the specification with the updated status of the '707 application.

Information Disclosure Statement

No Information Disclosure Statement has been filed in the instant application.

Claim Objections

Claims 9, 10 and 25 are objected to because of the following informalities: the claims end with two periods. Further, claim 10 has a period at the beginning of the claim. Appropriate correction is required.

Applicant is advised that should claim 22 be found allowable, claim 23 will be objected to under 37 CFR § 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing,

despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Applicant is advised that should claim 25 be found allowable, claims 26 and 27 will be objected to under 37 CFR § 1.75 as being a substantial duplicates thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Applicant is advised that should claim 28 be found allowable, claims 29 and 30 will be objected to under 37 CFR § 1.75 as being a substantial duplicates thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Applicant is advised that should claim 31 be found allowable, claims 32 and 33 will be objected to under 37 CFR § 1.75 as being a substantial duplicates thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 112 (Second Paragraph)

The following is a quotation of the second paragraph of 35 U.S.C. § 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9-20 and 28-33 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the instant case, the claims 9-16 and 28-33 recite concentrations of trichloromelamine of "from about 50 to about 500 ppm" (*e.g.* claim 9) and "from about 100 to about 200 ppm (*e.g.* claim 13). These ranges are indefinite because the words "from" and "about", when used together, are mutually exclusive. For example, a range of "from 50 to 500 ppm" defines both the lower and upper limits of the recited range. However, "from *about* 50 to *about* 500 ppm" renders the upper and lower limits indefinite. Applicant has not defined to what extent the word "about" modifies the recited range. As such, the metes and bounds of the recited ranges are not clearly defined.

Claims 17-20 recite "dusting with *powdered* trichloromelamine". However, claims 1-4, from which claims 17-20 depend, recite administration of "an *aqueous solution* of trichloromelamine". It is not clear how one will dust a habitat with powdered trichloromelamine, as required by the limitations of claims 17-20, when trichloromelamine is in an aqueous solution, as required by the limitations of claims 1-4.

Double Patenting

Statutory

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. § 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v.*

Eagle Mfg. Co., 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. § 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. § 101.

Claims 10-12, 14-16 and 28-33 are rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 5-7, 10, 30 and 34 of prior U.S. Patent No. 6,749,804. This is a double patenting rejection.

Claims 1-8 and 21-27 are rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-12 and 20-26 of prior U.S. Patent No. 6,616,892. This is a double patenting rejection.

Non-Statutory

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR § 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting

ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR § 3.73(b).

Claims 1-9, 13 and 17-27 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 and 26-39 of U.S. Patent No. 6,749,804. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only difference in the instant claims and those of the '804 patent is that the instant claims require an aqueous solution of trichloromelamine. However, this difference would have been *prima facie* obvious because dependent claims in the '804 patent recite administration of aqueous solutions. Further, administration of "an effective amount of trichloromelamine" as recited in the '804 claims encompasses administration by both aqueous solutions and dusting with powdered trichloromelamine.

Claims 9-20 and 28-33 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 and 20-30 of U.S. Patent No. 6,616,892. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only difference in the instant claims and those of the '892 patent is that the instant claims require specific doses of trichloromelamine. However, this difference would have been *prima facie* obvious because the claims of the '892 patent encompass the instantly claimed doses.

Citation of Pertinent Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 4,369,199 (Issued Jan. 18, 1983) discloses treating animal or poultry waste with an acid so as to eliminate unhealthy gases and pathogens.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James D. Anderson whose telephone number is 571-272-9038. The examiner can normally be reached on MON-FRI 9:00 am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James D. Anderson, Ph.D.
Patent Examiner
AU 1614

November 27, 2006

PHYLLIS SPIVACK
PRIMARY EXAMINER